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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM D. SWART, MICHAEL L. ASMUSSEN,
and JOHN S. MCCOSKEY

Appeal 2009-007615¹
Application 09/920,615
Technology Center 2600

Before JOHN A. JEFFERY, DEBRA K. STEPHENS, and
JAMES R. HUGHES, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL²

¹ Although the Examiner refers to two appeals that are said to be related to the present appeal, namely Applications 09/921,057 and 09/973,067 (Ans. 2), those applications are not germane to the issues before us in the present appeal. *Accord* App. Br. 4 (listing no related appeals). In any event, prosecution was reopened in the '057 application, and the '067 application was allowed.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-8, 30-33, and 35-51. Claims 9-29 and 52-27 have been withdrawn from consideration, and claim 34 has been cancelled. App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants invented a remote content crawler that continually crawls a communications network looking for content (e.g., a movie, television program, or electronic book) to provide to a content aggregator. Content is ultimately provided to users via a set top terminal. *See generally* Abstract; Spec. 5-7; Figs. 1-5, 8. Claim 1 is illustrative with the key disputed limitation emphasized:

1. A remote content crawler for use in a content search, packaging, and delivery system, comprising:
 - a remote content crawler processor that controls the remote content crawler;
 - a network resource processor that acquires data related to resources coupled to one or more communications networks;
 - a crawling criteria processor that acquires crawling criteria, said crawling criteria having a plurality of conditions;
 - a crawling criteria checker that determines if the acquired data meets said plurality of conditions of said crawling criteria;
 - a crawler content provider processor that receives, processes and stores content provider listings *such that a subscriber obtains desired content via tuning a set top terminal to a television channel carrying said desired content*; and
 - a network crawler, wherein the network crawler crawls content providers to acquire data related to available content in accordance with the crawling criteria.

The Examiner relies on the following as evidence of unpatentability:

Johansson	US 2001/0037498 A1	Nov. 1, 2001 (filed Mar. 22, 2001)
Johnson	US 2002/0010682 A1	Jan. 24, 2002 (filed July 19, 2001)
Stern	US 2002/0032740 A1	Mar. 14, 2002 (filed July 30, 2001)
Jensen-Grey	US 2002/0099697 A1	July 25, 2002 (filed June 11, 2001)
Meyerzon	US 6,547,829 B1	Apr. 15, 2003 (filed June 30, 1999)

THE REJECTIONS

1. The Examiner rejected claims 1, 4-8, 30-32, 35, 38-40, and 45-51 under 35 U.S.C. § 103(a) as unpatentable over Meyerzon, Jensen-Grey, and Johansson. Ans. 4-13.³
2. The Examiner rejected claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Meyerzon, Jensen-Grey, Johansson, and Stern. Ans. 13-14.
3. The Examiner rejected claim 33 under 35 U.S.C. § 103(a) as unpatentable over Meyerzon, Jensen-Grey, Johansson, and Appellants' admitted prior art. Ans. 14-15.
4. The Examiner rejected claims 36 and 37 under 35 U.S.C. § 103(a) as unpatentable over Meyerzon, Jensen-Grey, Johansson, and Johnson. Ans. 15-16.

³ Throughout this opinion, we refer to (1) the Appeal Brief filed August 20, 2008; (2) the Examiner's Answer mailed November 7, 2008; and (3) the Reply Brief filed January 7, 2009.

5. The Examiner rejected claims 41-44 under 35 U.S.C. § 103(a) as unpatentable over Meyerzon, Jensen-Grey, Johansson, and Schuetze. Ans. 16-17.

THE REJECTION OVER MEYERZON, JENSEN-GREY, AND JOHANSSON

Regarding representative claim 1, the Examiner finds that Meyerzon discloses a remote content crawler with every recited feature except (1) a “crawling criteria checker” that determines if acquired data meets plural conditions of crawling criteria, and (2) a subscriber obtains desired content via tuning a set top terminal to a television channel carrying the desired content. Ans. 4-5. The Examiner, however, cites Jensen-Grey and Johansson to cure these respective deficiencies in concluding that the claim would have been obvious. Ans. 5, 18-22.

Appellants argue that the cited prior art does not teach or suggest providing or obtaining desired content via tuning a set top terminal to a television channel carrying the desired content as claimed. App. Br. 11-14; Reply Br. 2-3. Although Appellants acknowledge that Johansson’s service information (SI) server (1) “tunes” to different networks to collect information, and (2) transmits data to a subscriber’s terminal via a data network, Appellants nonetheless contend that no data is transmitted to the terminal via tuning a set top terminal to a television channel carrying desired content as claimed. App. Br. 11-14.

The issue before us, then, is as follows:

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Meyerzon, Jensen-Grey, and Johansson collectively would have taught or suggested a crawler content provider processor that receives, processes, and stores content provider listings such that a subscriber obtains desired content via tuning a set top terminal to a television channel carrying the desired content?

FINDINGS OF FACT (FF)

1. We adopt the Examiner's undisputed findings regarding Meyerzon and Jensen-Grey (Ans. 4-5) as our own.

2. Johansson's system provides information to terminal 30 regarding services provided by various networks (e.g., data network 10, satellite network 40, cable channel network 50, terrestrial network 60) to which the terminal is connected. With this multi-network capability, services can be delivered to the user in many different ways, such as transmitting a digital television channel to the user via satellite, cable channel network, broadcasting network, or data network (e.g., the Internet). Johansson, Abstract; ¶¶ 0001, 0019-20; Fig. 1.

3. Johansson's terminal 30 includes all kinds of user terminals, such as Set Top Boxes or personal computers with Digital Television receiver cards. Johansson, ¶¶ 0018-19.

4. Johansson's system includes SI server 70 that maintains a database that user terminals 30 can access via data network 10. SI server 70 includes

an information collection application 75 that gathers information regarding the different networks' services by using the server's integrated receiver 76 to tune into the different networks and perform an automatic channel search. Johansson, ¶¶ 0021-23, 0027; Figs. 1-3.

5. Information inputted to SI server 70 can be collected from any source such as newspapers, TV magazines, TV guides on the Internet, etc. Johansson, ¶ 0024.

ANALYSIS

We begin by construing the key disputed limitation of claim 1 which calls for, in pertinent part, a crawler content provider processor that receives, processes, and stores content provider listings *such that* a subscriber obtains desired content via tuning a set top terminal to a television channel carrying the desired content. We emphasize the term “such that” here, for it merely recites a *desired result* of the crawler content provider processor functionality.

Although this recited desired result is not optional as Appellants argue (Reply Br. 1), it is nevertheless not squarely tied to the recited functionality of the crawler content provider processor in claim 1. As such, nothing in the claim precludes the subscriber's obtaining “desired content” independently of the recited receipt, processing, and storage of content provider listings. To the extent that these independent functions suggest a “disconnect” between their associated limitations as the Examiner suggests (Ans. 19-20) is a simply a matter of claim scope—a breadth that does not preclude satisfying the recited desired result independently of the crawler content processor's functions.

This point is critical to resolving this appeal, for we agree with the Examiner (Ans. 21-22) that nothing in claim 1 precludes a subscriber in Johansson from using television programming- and channel-related information (e.g., content-provider listings) that are received, processed, and stored by the SI server as a basis for the user subsequently tuning their set top terminal 30 to a particular television channel to obtain “desired content”—namely, the desired program. *See* FF 2-5. We reach this conclusion noting—as does the Examiner (Ans. 22)—that the information inputted to SI server 70 is collected from sources including TV magazines and TV guides (FF 5)—a teaching that strongly suggests receiving, processing, and storing content provider listings. That users obtain this information via Johansson’s data network 10 as Appellants argue (FF 4; App. Br. 12-13) is of no consequence here, for nothing in the claim precludes users from *subsequently* obtaining “desired content” (i.e., programs) by tuning to a television channel based on the information provided by the SI server. *See* FF 2-5. The Examiner’s point in this regard (Ans. 21-22) is well taken.

We find no error in the Examiner’s combining these teachings from Johansson with those of Meyerzon and Jensen-Grey to arrive at the claimed invention, particularly since Johansson’s SI server gathers information from disparate network-based sources via an information collection application (FF 4)—a function that at least suggests its applicability to the content crawling functionality of Meyerzon and Jensen-Grey. *See* FF 1.

We are therefore not persuaded that the Examiner erred in rejecting representative claim 1, and claims 4-8, 30-32, 35, 38-40, and 45-51 not separately argued.

OTHER REJECTIONS

We will also sustain the Examiner's obviousness rejections of (1) claims 2 and 3 over Meyerzon, Jensen-Grey, Johansson, and Stern (Ans. 13-14); (2) claim 33 over Meyerzon, Jensen-Grey, Johansson, and admitted prior art (Ans. 14-15); (3) claims 36 and 37 over Meyerzon, Jensen-Grey, Johansson, and Johnson (Ans. 15-16); and (4) claims 41-44 over Meyerzon, Jensen-Grey, Johansson, and Schuetze (Ans. 16-17). Appellants do not particularly point out errors in the Examiner's reasoning to overcome the Examiner's conclusion of obviousness regarding these claims, but merely reiterate similar arguments made in connection with claim 1. App. Br. 13-16. We are not persuaded by these arguments, however, for the reasons previously discussed. The rejections are therefore sustained.

CONCLUSION

The Examiner did not err in rejecting claims 1-8, 30-33, and 35-51 under § 103.

ORDER

The Examiner's decision rejecting claims 1-8, 30-33, and 35-51 is affirmed.

Appeal 2009-007615
Application 09/920,615

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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